IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Cr. Appeal No.202 Of 2000.

Date of decision: July 24th, 2007.

Ram Kumar Sharma. ..... Appellant.

Vs.

Suresh Chand and another. ..... Respondent.s

Coram

The Hon'ble Mr.Justice Surinder Singh, Judge.

Whether approved for reporting? No.

For the Appellant: Mr.Ajay Sharma Advocate.

For the respondents: Mr. Vijay Verma, Advocate vice Mr. Onkar Jairath, Advocate .

Surinder Singh, J (oral):

A complaint was filed by Bhagat Ram (now deceased) against the respondents herein and one Shri Joginder Pal, Postmaster, under Sections 464, 471, 423 read with Sections 120-B and 34 of the Indian Penal Code. His case before the trial court was that he is owner in possession of the premises situated in Khasra No.934. measuring 32 square meters, Mohan Mehatpur Kasbati, Tehsil and District Una. He got installed an electricity meter No.635 in the said premises, which was earlier rented out to the Post & Telegraph Department. When the said premises were vacated, by respondent No.1 Suresh Chand made a false declaration for the change of electricity meter in his name, alleging that he was the owner of the said premises

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Whether reporters of local Papers may be allowed to see the judgment?Yes.

which declaration was attested by the respondent Kewal Krishan, who was the member of the Notified Area Committee. It is alleged that the respondents knew the fact that the said premises were owned and possessed by the complainant, but they had intentionally prepared a false document and on this false representation, the electricity meter was got changed in the name of respondent No.1, which has caused injury to the right, title and interest of the complainant.

The preliminary evidence was led. The trial court sent the complaint to the Additional S.P., Una, for inquiry under Section 202 of the Code of Criminal Procedure. No case was stated to have been made out on inquiry against the respondents, however, finding sufficient grounds to summon the respondents on the basis of the preliminary evidence, the learned trial court vide its order dated 18.5.1996 summoned the respondents under Sections 465, 471 read with Section 34 of the Indian Penal Code. The pre-charge evidence was led. Complainant examined three witnesses. On considering the pre-charge evidence, respondent Joginder Pal, Post Master, Mehatpur was discharged, whereas, the trial court found a prima- facie case under Section 465, 471 read with Section 34 of the Indian Penal Code against the respondents. Accordingly, they were charge-sheeted vide order dated 5.9.1998 by the trial court. The respondents pleaded not guilty and claimed trial.

To prove his case, besides examining himself as CW-1, the complainant also examined Brahm Dass, Sub Post Master as

CW2 and on appreciating their evidence, learned trial court acquitted the respondents, on the ground that the complainant himself had admitted that the suit premises in which the electricity Meter was installed is still joint and was not partitioned, though the parties were in possession of their respective shares and also admitted that the complainant had executed an agreement to sell the suit premises in favour of respondent No.1 and had received the payment of Rs.25,000/- . The possession was delivered to this respondent. Thus, it was not clear as to how change of the meter in the name of respondent No.3 had caused any loss to him. There appears no case of forgery against the respondents, therefore, the trial court find no merit in the complaint. Accordingly respondents were acquitted in Criminal Complaint no.198-I-1994 by a detailed judgment dated 8.12.1999 against which the instant appeal has been filed, on the ground that the learned trial court did not appreciate the evidence in the right perspective, findings are based on conjectures and surmises and the conclusion arrived at is not born out from the record.

During the pendency of the instant appeal, complainant had died and vide a detailed order dated 30.5.2003, his legal representative Ram Kumar, was allowed to continue the present appeal.

I have heard the learned counsel for the parties and have reappraised the evidence on record.

The main base of the complaint regarding the change of the Electricity Meter of the alleged premises of the complainant in the name of respondent No.1, without his

consent is not proved on record. The original application is alleged to have been moved by the respondent No.1 and attested by respondent No.2, but that application which is primary evidence was not produced on record. Though complainant had examined CW2 Ram Pal, L.D.C., but it is not know whether he had made a statement on the basis of the record or on personal knowledge. It is a well established law that in respect of a document no oral evidence can be led unless it is produced and proved on record. No documents from the file of the Electricity Department has been put in evidence as per procedure. It was incumbent upon the complainant to produce and prove all the original representations made by the respondent No.1 which was alleged to have been attested by respondent No.2. Even CW2 aforesaid has stated in the cross-examination that he did not know for which house or shop or on which Khasra, the said Meter was installed and further stated that their department never verify the ownership of the house or land, where the Meter was to be installed. Even Brahm Dass (CW) has stated that he did not know as to who was the owner of the rented premises. Complainant Bhagat Ram (CW1) in the cross-examination by respondents No.1 and 2 has stated that Suresh Kumar was also running a Cigarette -Biri shop in the vicinity and with respect to his share in the said khewat where the disputed meter was installed, he had entered into an agreement on 28.4.1994 with respondent No.2 pursuant to which he had received Rs.25,000/- as an advance. The premises were also delivered to the respondent No.1. In absence of the

non-production of the best evidence and on the basis of the dilatory and contradictory evidence, the guilt of the respondents stands not proved. The learned trial court had rightly concluded that there was no merit in the complaint. Thus, there is no case made out for any interference by this court. Accordingly, the appeal is dismissed.

The bail bonds of the respondents, entered upon at any stage during the proceedings of this case stand discharged. The matter is disposed of accordingly.

July 24th, 2007. **(Surinder Singh)**
(PDS) **Judge**.